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April 8, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

VIA EMAIL: regs.comments@federalreserve.gov

Re: Docket No. R-1305

Dear Ms. Johnson:

I write on behalf of the Greater Rochester Community Reinvestment Coalition (GRCRC) to comment on the Federal Reserve Board of Governor's proposed amendments to Regulation Z, which implements the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA) regulations. Thank you for examining this critical federal regulation which governs home lending. We appreciate the opportunity to comment.

GRCRC was convened in 1993 to generate discussion about the lending patterns in Rochester. Since then, the Coalition or its convenor, Empire Justice Center, has released nine analyses of home mortgage, small business and subprime lending data.[1] We have used the analyses to identify strengths and weaknesses in lending patterns and to generate ongoing discussion with the banks in question. The Coalition also submits comments, based on the data, to the appropriate State and Federal regulators who have oversight of the banks.

On March 28th 2007, Empire Justice released a report entitled "Curbing the Mortgage Meltdown: The Impact of Foreclosures on New York's Economy and Upstate and Long Island Communities."[2] The report maps zip code level data drawn from reports by the Board of Governors of the Federal Reserve System and released in January by the Federal Reserve Bank in New York. The report provides a powerful snapshot of subprime loans that are already in foreclosure or in which households are already 30 or

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[1] Our most recent analysis, "Paying More for the American Dream: The Subprime Shakeout and Its Impact on Lower-Income and Minority Communities" is of the 2006 HMDA data and can be found at: http://www.empirejustice.org/content.asp?contentid=3051.
[2] Empire Justice Center website at http://www.empirejustice.org/content.asp?ContentId=3101 .

more days behind in making mortgage payments, as well as percentages of Adjustable Rate Mortgages (ARMs) that will have interest rates increase, or will "reset," between now and October 2009.

The subprime crisis has yet to peak in New York, and the potential wave of foreclosures could have a devastating impact on Long Island and in key upstate cities, towns and neighborhoods. As the Empire Justice report vividly demonstrates, many of our neighborhoods have an unsustainable concentration of high cost loans. The city of Rochester has seen over 13,000 foreclosures in the past decade, leaving neighborhoods with vacancy rates as high as 30 percent. These and other neighborhoods throughout the country cannot afford to lose one more home to foreclosure, yet bad loans continue to be made. We need the Board to take strong regulatory action immediately to stop the poison of predatory lending that is decimating our communities.

The proposed Regulation Z changes would give consumers important added protections. It is our position, however, that the proposals should be strengthened to make sure that consumers are adequately protected from the abuses that have led to the current crisis in the subprime mortgage lending industry.

Proposed Rules for Higher-Priced Mortgage Loans

Broaden the definition of covered loans.
The definition under the current proposal excludes categories of non-traditional mortgages, such as payment option ARMs, interest-only mortgages, and home equity lines of credit (HELOCs), that would remain essentially unregulated. These mortgages contain some of the worst abuses in the home lending industry. GRCRC urges the Board to include the above non-traditional mortgages in its definition of covered higher-priced mortgage loans. Expanding the definition of loans to be covered by the enhanced regulations would most certainly better satisfy the objectives of covering the subprime market while generally excluding the prime market

Remove the "pattern and practice" element from the prohibition against making higher-priced mortgage loans without regard to borrowers' ability to repay.
The systematic origination of unaffordable loans has been at the core of the subprime lending and foreclosure crises. GRCRC lauds the Board for proposing an expanded ability to repay standard – the principle of borrowers' ability to repay is absolutely critical. But the provision is only as meaningful as its enforceability. Inclusion of "pattern and practice" language would severely undermine the provision. By including a "pattern and practice" standard, the Board would effectively imply that single violations of the ability to repay provision are not prohibited, thereby also weakening the provision's deterrent effect. Under this standard, it has been extremely difficult for individual borrowers, without access to lenders' portfolios to defend themselves.

Eliminate the safe harbor provision with respect to income verification.
Income verification is a basic component of ensuring affordable lending. Lenders have a wide range of documentation they can use to verify income and assets including pay

statements, bank account information, tax returns, check receipts and an inventory of assets. Enhanced verification requirements will not affect self-employed and other borrowers who may traditionally have had difficulty in documenting income and assets from getting access to credit. However, the safe harbor provision will prevent reasonable regulatory enforcement since creditors only will face liability where someone can prove the income relied upon was different from the actual income and examiners often will not have information about the actual income. The safe harbor will create an incentive to not comply with the rule and will create a significant barrier to borrowers seeking to challenge the income documentation on their loans.

Ban prepayment penalties.
Prepayment penalties are often associated with racial steering and generally do not buy down the rate. If the Board chooses not to ban them, they should at least prohibit their use along with yield spread premiums. At a minimum, prepayment penalties should expire six months before any rate reset.

We support the requirement that creditors establish escrow accounts for taxes and insurance in first-lien mortgages.
Mortgage brokers and loan officers for too long have taken advantage of subprime loan products that don't escrow for taxes and insurance. Borrowers have been deceptively refinanced into loans, led to believe that their new payment is lower than their current payment monthly, only to learn after the loan closing that their new payment does not include an escrow for taxes and insurance. In New York, where property taxes are particularly high, this deception has resulted in severe distress for homeowners who did not separately factor a tax payment into their housing budget. Borrowers should be informed about the escrow payment when they are first told what their monthly mortgage payment will be, and with every disclosure (oral and written) thereafter so that borrowers can efficiently shop for the best loan product and realistically determine whether a loan is in their best interest.

Ban yield spread premiums for all higher-cost and non-traditional mortgages. Yield spread premiums, like prepayment penalties, operate very differently in the subprime and prime markets. In the subprime market, YSP abuses have been used pervasively as a tool for providing kick-backs to mortgage brokers who gouge borrowers.

<u>Proposed Rules on Mortgage Loans Secured by Consumer's Principal Dwelling</u>

Establish a fiduciary duty on mortgage brokers, and require that it be spelled out in written mortgage broker compensation agreements with borrowers.
If it is the intent of the Board to protect borrowers from unscrupulous broker practices, then it makes sense to demand that brokers work in the best interest of the borrower for whom they are working and by whom they are getting paid, either directly or indirectly. Borrowers generally believe that a broker is required to be working in their best interest. A regulation setting this forth explicitly would create clarity in the marketplace.

The currently proposed compliance alternatives are inadequate to protect consumers and ensure compliance with this proposed regulation. Borrowers should have in writing the amount for which they will be required to pay their broker. Secondly, allowing creditors to show that they pay brokers the same flat fee for all transactions allows lenders, not consumers, to set the fee amount.

Ban or, at a minimum, substantially limit, yield spread premiums on all closed-end loans, not just higher-priced and HOEPA loans.
Yield spread premiums are counter-intuitive to borrowers who generally believe mortgage brokers work in their best interest to get them the best interest rate on their loan. They are not transparent to borrowers, and they leave great room for abuse. At a minimum, yield spread premiums should be allowed only where the rate includes all closing costs. In addition, yield spread premiums also should be included in the calculation of the HOEPA points and fees triggers.

Address lender and originator incentives for appraisal fraud.
Rochester NY has felt the devastating impact of inflated appraisals being used in the subprime mortgage lending industry. Many of our homeowners are "upside down" in their homes, unable to afford their current loans and unable to sell, or refinance, because the amount of the loan exceeds the value of the home. Foreclosures concentrated in certain neighborhoods are now jeopardizing their stability, as well as the stability of the entire city. It almost goes without saying that creditors and mortgage brokers should be prohibited from coercing, influencing, or otherwise encouraging an appraiser to provide a misstated appraisal. However, we are concerned that, as written, the proposed regulation will not adequately ensure compliance. We urge the Board to explicitly hold lenders responsible for appraisal misconduct. In addition, we ask that the Board consider including a set of policies in its final rule to ensure appraiser independence and accurate valuations. As a starting point, the Board could use the policies developed in the Ameriquest-AG settlement.

Expand the proposed mortgage servicing regulations to include the regulation of servicer fees, provision of payment histories and loss mitigation.
GRCRC is pleased that the Board recognizes the need for regulation of the mortgage servicing industry. Though the proposed amendments would codify what should already be standard business practices – including crediting payments when received, providing payoff statements and fee schedules within a reasonable time period and prohibiting the "pyramiding" of late fees – our extensive experience in working with borrowers is that these basic practices are too often not followed.

Regulation also is needed to limit the fees that servicers can charge, and to mandate that servicers provide borrowers clear and understandable payment histories with accurate accounting of suspense accounts.

Customer service and loss mitigation departments should also be regulated. **In particular, the Board should state that failure to provide reasonable loss mitigation prior to foreclosure is an unfair practice.** Borrowers are reluctant to turn to their lenders for assistance when they fall behind in their payments in great part because they are often met with unfriendly and confusing service and a paucity of workable options. Loss mitigation options have not kept up with changes in the economy and changes in the foreclosure crisis. Therefore, the Board should require more flexible and diverse loss mitigation options so that homeowners can get relief directly through their lenders.

Other Potential Concerns

Prohibit the steering of borrowers into loans priced higher than the borrowers' risk profile warrants.
Current law and regulations are not sufficient. The Equal Credit Opportunity Act (ECOA) protects limited groups of borrowers. In addition, it is difficult to prove that a borrower was steered into a higher priced loan as the result of the borrower's race, ethnicity, or other prohibited factor, especially when a lender routinely steers borrowers into higher priced loans. The proposed regulations covering mortgage broker compensation (Sec. 226.36(a)) and prohibiting lenders from engaging in a pattern and practice of making unaffordable loans (Sec. 226.35(b)(1)) are inadequate for the reasons explained above. If it is the agreement of the Board that steering is inappropriate, then we urge the Board to explicitly prohibit the practice.

Provide effective remedies, including an actual damages standard that can be satisfied; rescission for failure to provide early disclosures; and clarification that assignee liability applies to substantive violations in the rule where violations were apparent on the face of the loan file documents.

Mortgage Loan Disclosures

Require binding early mortgage disclosures for all loans.
While disclosures can never replace or equal the protections that prohibitions and strong regulation can provide for consumers, applicants should be empowered with the most accurate and current information possible to allow them to shop for the best product. Binding disclosures, obtained sufficiently in advance, will lead to the comparison shopping that TILA envisions. At a minimum, borrowers should be given a remedy, such as the right to rescission, if early and accurate disclosure is not made.

We also urge the Board to extend this disclosure requirement to HELOCs for loans secured by a principal dwelling. HELOCs are mortgages and can jeopardize homeownership if the borrower is unable to make their scheduled payments; they should not be excluded from this protection.

Thank you again for the opportunity to comment on the Board's proposed reforms.

Sincerely,

Ruhi Maker, Esq. Barbara van Kerkhove, Ph.D.
GRCRC Co-convenors